



September 23, 2002

Ms. Ruth H. Soucy
Deputy General Counsel
Open Government Section
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2002-5354

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 168286.

The Comptroller of Public Accounts (the "comptroller") received two e-mail requests for information, both seeking "all notes, files, and correspondence with regard to the development of the [Available School Fund] estimate contained in the [comptroller's] Biennial Revenue Estimate for the fiscal years 2002-2003." Among other arguments, you assert that the requested information is excepted from required public disclosure under sections 552.106, 552.111 and 552.116 of the Government Code.

The Act's disclosure requirements are generally triggered by a governmental body's receipt of a written request for information. *See* Gov't Code § 552.301(a). However, in instances where a written request is submitted to a governmental body by facsimile transmission or through e-mail, the Act specifically provides that the request be "sent to the officer for public information, or the person designated by that officer[.]" *Id.* § 552.301(c). Thus, for written requests that are submitted to a governmental body via facsimile or e-mail, the Act's disclosure requirements are triggered only if the request is sent to the governmental body's "officer for public information," or by a person designated by that officer to receive such requests.

In this case, you have shown that the two requests for information at issue here were both sent by e-mail from the requestor to an employee of the comptroller. You represent, and we agree, that this employee is not the comptroller's officer for public information. *See* Gov't Code § 552.201 (officer for public information is defined as chief administrative officer of governmental body). You also indicate that the employee is not a person who has been designated by the comptroller to receive open records requests. We thus conclude that neither of the e-mail requests at issue here triggered the applicability of the Act. The comptroller, therefore, is not required by the Act to respond to these requests. In light of this conclusion, we need not address the asserted exceptions to public disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

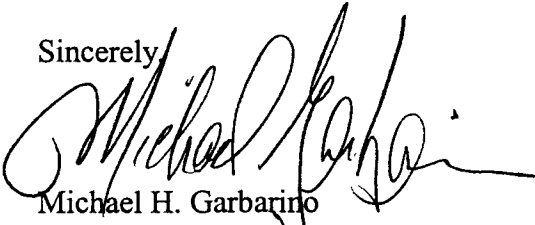
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael H. Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 168286

Enc. Submitted documents

c: Mr. Don McLeroy
3707 Tanglewood
Bryan, Texas 77802
(w/o enclosures)